

Because it is important that persons who may be warned, prevented from doing certain acts, and even arrested, by a forest officer, should be able to know by his dress and badges, who he is and what *primá facie* is his official position. As a matter of practice, the superior staff wear nothing in the way of uniform or distinctive mark, and the subordinate staff wear a sort of uniform, but not the same in all provinces, or even in all divisions of one province, and are furnished with a badge. It is desirable that this should be put on a proper footing, because, under section 171 of the Penal Code, it is a criminal offence for a person not belonging to a certain class of public servants to "wear any garb or carry any token" resembling any garb or token used by that class of public servants. It is true that there is nothing said about the "token" (it may be a "chaprás" or badge or a truncheon or a weapon of pattern) or the uniform being prescribed by rule of any kind; it is merely that such garb is, as a fact, usually worn by the class of public servant in question. Still the official regulation of these matters is desirable and would prevent questions arising<sup>6</sup>.

### SECTION III.—THE SPECIAL OBLIGATIONS OF FOREST OFFICERS UNDER THE FOREST AND GENERAL LAW.

#### § 1.—*Not to trade.*

In order that the undivided time and attention of forest officers may be given to their duties, as well as to keep them free, in the general estimation, from suspicion of any interest in work going on, it is prescribed by law (Indian Act, section 74; Burma, section, 73) that, except with the written permission of the Local Government, no forest officer "shall, as principal or agent, trade in timber or forest produce or be <sup>7</sup> or become interested in any lease of

<sup>6</sup> In France the uniform and accoutrements of all grades are laid down in the Ordonnance Réglementaire, Art. 18, and the decree of 17th November 1852 (see page 103 of the pocket edition of the Forest Codes). See also the preceding note regarding the oath of service.

<sup>7</sup> So that if before the Act came into force he held any such contract he must at once get free of it.

any forest, or in any contract for working any forest, whether in British or foreign territory."

There is also a prohibition in section 11 of the Departmental Code, which, being obligatory on the service (as I have explained) by contract, also places him under a *legal obligation*. This paragraph runs as follows:—

"Except with the permission in writing of the Local Government no forest officer shall acquire or continue to hold cultivated land, or land intended to be cultivated, or forest land, in any province to which he is temporarily or permanently posted, or with the administration of which he is concerned.

"In the case of forest officers who are natives of India, and who may possess or acquire landed property, ancestral or other, it will be sufficient that a detailed report of the situation, nature, and extent of such property be furnished to the Conservator of Forests, who will, under the control of the Local Government, pass such orders as may be necessary.

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"Unless specially authorized by the Local Government, forest officers must abstain from any investment (though of itself unobjectionable), which interests them privately in affairs or undertakings of the kind with which their public duty is connected.

"And generally it is a rule of service that no forest officer is permitted to engage in any speculation or mercantile transaction of such a nature as to engross his attention and divert it from his public duty, or such as to give rise to a belief that his official position may have had influence by obtaining favourable terms or otherwise in respect of such transactions.

"The above provisions apply to officers of the superior staff, as well as to forest-rangers, foresters, forest guards, and members of office establishments."

An offence against either the section of the Forest Act or the

<sup>8</sup> The lines omitted repeat *verbatim* section 74 of the India Forest Act, already quoted.

service rule in the Code<sup>9</sup> would be punishable under section 168 of the Indian Penal Code<sup>10</sup>.

### § 2.—*Vexatious use of lawful Powers.*

The Forest Act provides a penalty against Police or forest officers who "vexatiously and unnecessarily" seize any property under colour of seizing property liable to confiscation under the Act (Indian Act, section 61; Burma Act, section 61)<sup>1</sup>.

### § 3.—*Other Obligations.*

But besides these, the general law under the Indian Penal Code lays certain obligations on all public servants: and forest officers, no less than others, would be liable to prosecution, as such public servants, for breach of the provisions.

I shall here only allude to such sections as it is possible, in practice, to require reference to in the Forest service.

<sup>9</sup> With reference to the definition of the terms "illegal" — "legally bound" in the Penal Code, the term "legally bound" is applicable to everything (a) which is an offence, or (b) is prohibited by law, or (c) which furnishes a ground for civil action. Any breach of a service rule or obligation would at least come under the last of these.

Section 169 also punishes the bidding at an auction by a public servant who is bound not to bid.

<sup>10</sup> In France (Code F., Art. 4) the forest officer's employment is declared incompatible with any other office; and the Ordonnance also adds other occupations that he may not engage in, for instance he must not trade in wood, or have any trade in which wood is the principal material employed. Nor must he keep an inn or sell drink. By Code F., Art 21, he is barred (and certain of his near relations also) from bidding directly or indirectly, or taking part in purchases of forest produce put up to auction. The "adjudication" of sale would be void and a heavy penalty due besides.

By the Saxon law (that alluded to in a previous note), the public servant must not engage in any trade or profession (*Erwerbszweig*), nor in any occupation compatible with the dignity (*würde*) of his office, or that would conflict with his public duty.

<sup>1</sup> As M. Puton neatly expresses it, these legal provisions are the counterpoise to the legal authority given to forest officers. "*La possibilité d'une peine est le contrepois de l'autorité qui leur est confiée*" But as M. Puton adds, in France, and I hope it is true also in India, no case has yet come up in which these penalties have had to be inflicted, and they might well be dispensed with, seeing the sufficiency of the service rules for control and punishment (Manuel, p. 48).

#### 4.—*Public Servant concealing design to commit, or abetting an Offence.*

A forest officer concealing, by any act or illegal omission, a design to commit an offence which it is his duty to prevent, or making a false representation regarding such design, would be punishable under section 119, Indian Penal Code<sup>2</sup>.

Should he go further and actually aid in or *abet* the offence, he would be liable, under section 116, to *double* the penalty a private person would.

#### § 5.—*Bribery.*

The offence of bribery, or as it is technically called (receiving an illegal gratification)<sup>3</sup>, is also one which needs mention.

The principal section (Indian Penal Code, 161) may be exhibited analytically, thus:—

- { A public servant, or
- { A person *expecting to be* a public servant.

Who—

- { Accepts [when offered *without* overture on his part],
- { Obtains [when *there is* an overture on his part],
- { Agrees to accept [has an understanding with the offerer],
- { Attempts to obtain [solicits for example, or hints that he would like].

<sup>2</sup> This does not of course deal with cases of negligence, or mere carelessness in execution of duty. But a forest guard who allows cattle to trespass in a closed forest, or other offences to happen, should be held responsible as a matter of service obligation.

In the French Code (Art. 6), there is an excellent provision that guards are (pecuniarily) responsible for forest offences that occur in their beat (*délits, dégâts, abus, et abrouissements*," offences, injuries, and browsing by cattle). They are liable to pay the fines and damages that the delinquent would have incurred, unless they have properly done their duty in discovering the offender and making the necessary report of the offence.

In India, when a forest officer allows trespass and so forth by negligence or inattention to his duty, the remedy is to reprimand, fine, or even dismiss him (in grave cases) departmentally.

<sup>3</sup> Gratification need not be money (*Explan.* to Section 161). "Legal remuneration" is not confined to Government pay, but is anything which "he is permitted by the Government he serves to accept."

From any person, for himself or for any other person any gratification other than his lawful remuneration, as a motive or reward<sup>4</sup> for—

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|---|------------------------------------|---------------|---|
| { | Doing any official act             |               |   |
| { | Forbearing to do any official act, |               |   |
| { | Showing                            | { favour      | } in exercise of official functions,                  |
| { | Forbearing to show                 | { disfavour   |   |
| { | Rendering                          | { Service     | } with Government <sup>5</sup> or any public servant. |
| { | Attempting to render               | { Dis-service |   |

is liable to imprisonment which may extend to three years or to fine, or both.

The person who gives or offers, &c., the bribe is liable as an abettor.

Nor is it only this more direct form of bribery that is punishable. A public servant who obtains any *valuable thing* (e.g., a house, a lease of a house, a loan of money on easy terms) either without any equivalent or 'consideration,' or for a consideration which he knows to be inadequate, from any person whom he knows to have been, to be, or to be likely to be connected, in any way with his own official business or that of his superior officer, or even from a person, who is interested in or related to a person so connected, is liable under section 165, Indian Penal Code.

So also a person may not venture to offer a gratification<sup>6</sup> to a public servant directly, but he may offer it to a third person, who

<sup>4</sup> *Motive* before the act, *reward* after it. It is wholly immaterial whether he really did the thing or intended to do it; it is no excuse to say "I took bribe as a motive to do the thing, but all the while I never intended to do it;" nor "I took the reward as for a thing done, but I have not really done it." [*Explan. to Section.*]

<sup>5</sup> "Government" here means the Government of India, or any Local Government either in executive or legislative branches.

<sup>6</sup> In order that public servants may remain not only free from temptation to actual offences but free from suspicion of being influenced, there are various rules about their not accepting gifts at any time. By law (13, George III, c. 63, sections 23-5, (and 33, George III, c. 52, section 62 also), the receiving of gifts from any of the Indian Princes or any "Native of Asia" by any person holding office under the Crown or the East India Company is forbidden and is punishable; but this does not apply to fees taken by lawyers, physicians, chaplains, &c.

undertakes to *induce* by *corrupt* or *illegal means* (section 162), or to use his *personal influence* with and so induce (section 163) the public servant, so that he may do or not do something, or show favour or disfavour in his official dealings. This is punishable. In these cases the public servant may of course be entirely ignorant of the acts of the others; but should he abet them, he becomes liable to a severer punishment under section 164 than could be given under section 162 or 163. The illustration given explains this. 'A is a public servant, B is his wife. C comes to B and begs her to use influence with A to get an appointment for C himself, or some other, and gives her a gold bracelet. Here B would be liable under section 163 to one year's imprisonment, but if A knows of it and abets her, he would be liable, under section 164, to three years' imprisonment.

It is necessary that these stringent provisions should exist, but, on the other hand, the very stringency of them makes it possible for persons from motives of revenge, or to annoy a public servant, whose duty, however faithfully discharged, may be obnoxious to them, to get up false and vexatious charges of such offences.

If then a prosecution is undertaken against a public servant, *as such*, there are certain preliminary sanctions necessary which will be alluded to in their proper place.

### § 5.—*Misuse of Official Power.*

There are also some provisions of the Indian Penal-Code which are in their nature to be classed with section 61 of the Forest Act, to which I have already alluded. They refer to cases where the *authority* or *power* of a public servant is *misused* with intent to injure.

It is difficult sometimes, without giving great offence, to refuse a present, but a public officer should endeavour to explain the matter with courtesy and so avoid the gift. If it is on some formal ceremony or official occasion, where the gift cannot be refused, it is accepted and afterwards handed over to the Government "*toshakhána*."

Only presents of absolutely no value, that are mere compliments, and that it would give offence to refuse, such as flowers or fruits, can be received, and this should be discouraged, and eventually dropped.

In France, Art. 55 of the Ordonnance Regulation *absolutely* prohibits the receiving of gifts.

In these cases no bribe may be offered, but the public servant is actuated by a desire to injure or annoy some person obnoxious to him.

A public servant disobeying any direction of the law as to the way in which he is to conduct himself, is liable under section 166, Indian Penal Code.

If it be his duty to draw up or translate some official document, and he intentionally does it wrong, to injure some one<sup>7</sup>, or knowing that injury will be likely, he is liable under section 167, Indian Penal Code.

### § 6.—*Offences to screen Offenders.*

An offence similar to that in section 166, if done in order to save a person from legal punishment or diminish that punishment, or to save property from legal forfeiture or other charge, is contemplated by section 217; and so an offence similar to that in section 167, done with this object, is punishable under section 218.

As a forest officer is required to prevent offences, and has a power of arrest, it is possible that cases under section 221 may occur, in which an offence may be committed by a forest officer intentionally omitting to apprehend an offender or intentionally suffers or aids his escape<sup>8</sup>.

### § 7.—*Breach of trust.*

Lastly there may be special forms of the offence of criminal breach of trust<sup>9</sup>, when it is committed by a public servant. (Indian Penal Code, Section 409.) All these are offences in which, to make the sections quoted applicable, the offender must be a public servant.

### § 8.—*Liabilities indirectly connected with Forest Works.*

There are, of course, many offences which may be committed

<sup>7</sup> That is quite another thing to forgery or falsifying accounts, &c. These are punishable under other sections for forgery, cheating, &c.

<sup>8</sup> And the person in this case to be arrested, &c., may be guilty of a forest offence, for the term "offences" in section 221 includes offences under special laws. (Section 4 O. T. P. C.)

<sup>9</sup> The difference between theft, criminal misappropriation and criminal breach of trust has been explained in the chapter on Offences. See *ante*, p. 314.

irrespective of public duty, but which nevertheless may possibly occur in connection with the public duty of forest officers, clerks, &c., such as making false entries in books and fabricating false evidence. (Sections 192-3, Indian Penal Code).

Signing or issuing a false certificate (section 197), making a false statement in a declaration receivable as evidence (section 199), causing disappearance of evidence to screen an offender (section 201), making a false charge with intent to injure (section 211), making a false document (section 464,) and kindred offences. These, however, will need no special explanation.

### § 9.—*Offences not actually criminal.*

The liability of forest officers for breaches of duty not amounting to any criminal offence, such as negligence, insubordination, drunkenness, or immorality interfering with his public duty or character as a public servant, is, as I have said, dependent on departmental rules; fine or dismissal are the appropriate remedies according to the rank of the offender, under the appropriate clauses of the Departmental Code.

### § 10.—*Suspension during Enquiry.*

In cases where a forest officer is charged with misconduct, or is under a criminal charge as a private person (which charge is disgraceful to him as a public servant, and conviction of which would render him unfit to be retained in the service), he should be *suspended* from his duty during the enquiry. Whether he is reinstated and allowed his pay for the time he has been suspended, depends on the result of the case, and the view taken of the officer's conduct by the authorities<sup>10</sup>. In ordinary cases the head of the department causes an enquiry to be made, and sends the case up for orders, if he cannot, under departmental rules, dispose of it himself. In all cases, the charge, the defence, and the order passed, should be in writing. As regards defence, it is important (even if, in the course of enquiry, the suspended officer has *practically* been heard, and his excuse is

<sup>10</sup> See Government of India Resolution, Home Department, No. 37, 29th July 1879. This Resolution also acknowledges the right of a person dismissed, &c., to appeal.